

## **EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 03 DECEMBER 2004**

**04/0873/FL: PROPOSED SITE EXTENSION TO PERMIT EXTRACTION OF  
ADDITIONAL COAL AT GARLEFFAN II OCCS, NEW CUMNOCK.**

**APPLICATION BY ATH RESOURCES**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 Full permission is sought for an extension to the existing opencast operations at Garleffan to extract some 250,000 additional tonnes of coal on the western boundary of the site. Although the application site covers approximately 22.6 hectares, the proposed extension to the extraction area is approximately 6 hectares. The extension area is presently rough grazing land and no trees, hedgerows, dykes or ecologically significant features would be affected by the proposed development. The area is remote with only a few farmsteads in the surrounding area.

1.2 The geology of the site is such that the 11 existing coal seams dip generally towards the south west and exploratory drilling has demonstrated that they continue for a short distance before either faulting or dip significantly to render them inaccessible. The coal seams are imbedded with mudstones, sandstones and whinstone, some of which will require to be blasted prior to excavation in line with the current situation at Garleffan.

1.3 The proposed extension will be incorporated into the site design and will be mined as the site progresses in a north easterly direction in accordance with the current approved scheme. The coal within the small extension area is simply a continuation of the current seams and extraction will be accomplished by a broadening of the currently planned working benches. The proposed extension will not result in the need to store additional overburden and no additional site infrastructure will be required.

1.4 Coals extracted from the extension area will continue to be processed on site and thereafter transported to the Crowbandsgate Railhead for onward dispatch by rail to market, all in accordance with existing approved operations on site. The extension would be operated in accordance with the existing conditions of the Garleffan II site including hours of operation, noise and vibration limits and coal dispatch hours.

1.5 The proposed extension would extend the life of the Garleffan II site by approximately 3 months but this will not extend the life of the site beyond the current consented term of 11 years. In terms of site restoration, the extension area will be incorporated within the current planned restoration proposals. In

this regard the restoration proposals in terms of timescale will not be significantly prejudiced by the proposed extension.

## **2. RECOMMENDATION**

**2.1 It is recommended the application be approved subject to the conditions on the relevant attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement with the applicants regarding the obligations referred to in Section 8.4 of this report.**

## **3. SUMMARY OF ANALYSIS**

3.1 As indicated in Section 5 of the report, the proposed development is considered to be generally in accordance with the Development Plan but represents a minor technical departure in respect of a small part of the application site that lies outwith the identified Potential Coal Extraction Areas. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6, there are material considerations relevant to this application, but in this regard, these are generally supportive of the proposed development.

3.2 The proposed development is considered to constitute a minor departure from Policy MIN3 as a part of the proposed extension area falls outwith the identified Potential Coal Extraction Areas. However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, these were identified as a result of an assessment process including the presence of known reserves of coal. While there are no particular environmental or infrastructure constraints that would exclude this area as part of the Potential Coal Extraction Area in the locality of Garleffan, it has been excluded on the basis of no coal reserve having been identified on that part of the site. The application promotes the extraction of 250,000 tonnes of coal that the applicant has proven exists by exploratory drilling.

3.3 The proposed extension is 22.6 hectares in size although the extended excavation area represents only some 6 hectares. The site is relatively remote with only a few farmhouses located in proximity to the application site. It is considered that the extension will present no significant additional adverse impacts beyond those that may be expected as a result of the current consented operations.

3.4 Operations within the extension area will be undertaken in accordance with the provisions of the existing planning consent and Section 75 Agreement for the Garleffan site. Coals won from the site will be taken to the existing railhead facility at Crowbandsgate.

3.5 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is generally consistent with policy. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the Garleffan site has been amended to encompass obligations covering the following matters:

#### **Amendment to Section 75 Agreement**

- (i) Inclusion of the extension area within the land covered by the Section 75 Agreement;
- (ii) The securing of Minerals Trust Fund contributions for coals extracted from the extension site at a rate of 27.5 pence per tonne; and
- (iii) The amendment of the Section 75 Agreement to secure the outstanding environmental mitigation and monitoring as identified in the consultation letter from the RSPB Scotland dated 07 October 2004.

#### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee because this would not result in a significant departure from the development plan.

**Alan Neish**  
**Head of Planning, Development and Building Standards**

**Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.**

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### APPLICATION BY ATH RESOURCES

#### Report by Head of Planning, Development and Building Standards

## 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application, which is to be considered by the Local Planning Committee under the scheme of delegation because it represents an extension to an existing opencast site which is generally in accordance with the Opencast Coal Subject Plan.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The proposed development site lies about 3.5km east of Cumnock and 3.5km north of New Cumnock. The application site extends to approximately 116 hectares and comprises land associated with the farm steadings at Avisyard, High Garleffan and High Polquheys that now form the Garleffan II opencast coal site.

2.2 The proposed development site is remote and distant from any surrounding development and there are few isolated residential properties in the vicinity of the site. Planning permission was granted for the Garleffan II opencast site on 05 October 2001(Ref. No. 00/0526/FL), permission having been previously granted for the original Garleffan site on 09 September 1999 (Ref. No. 98/0539/FL). These consents were granted to L.A.W. Mining Limited which operated the site until 28 November 2003 at which time its interests in the Garleffan site was acquired by ATH Resources.

2.3 **Proposed Development:** Full permission is sought for an extension to the existing opencast operations at Garleffan to extract some 250,000 additional tonnes of coal on the western boundary of the site. Although the application site covers approximately 22.6 hectares, the proposed extension to the extraction area is approximately 6 hectares. The extension area is presently rough grazing land and no trees, hedgerows, dykes or ecologically significant features would be affected by the proposed development. The area is remote with only a few farmsteads in the surrounding area.

2.4 The geology of the site is such that the 11 existing coal seams dip generally towards the south west and exploratory drilling has demonstrated

that they continue for a short distance before either faulting or dip significantly to render them inaccessible. The coal seams are imbedded with mudstones, sandstones and whinstone, some of which will require to be blasted prior to excavation in line with the current situation at Garleffan.

2.5 The proposed extension will be incorporated into the site design and will be mined as the site progresses in a north easterly direction in accordance with the current approved scheme. The coal within the small extension area is simply a continuation of the current seams and extraction will be accomplished by a broadening of the currently planned working benches. The proposed extension will not result in the need to store additional overburden and no additional site infrastructure will be required.

2.6 Coals extracted from the extension area will continue to be processed on site and thereafter transported to the Crowbandsgate Railhead for onward dispatch by rail to market, all in accordance with existing approved operations on site. The extension would be operated in accordance with the existing conditions of the Garleffan II site including hours of operation, noise and vibration limits and coal dispatch hours.

2.7 The proposed extension would extend the life of the Garleffan II site by approximately 3 months but this will not extend the life of the site beyond the current consented term of 11 years. In terms of site restoration, the extension area will be incorporated within the current planned restoration proposals. In this regard the restoration proposals in terms of timescale will not be significantly prejudiced by the proposed extension.

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council's Roads and Transportation Division has no objections to the proposed development.

***Noted.***

3.2 Cumnock Landward and New Cumnock Community Councils have not responded to the consultation letters.

***Noted.***

3.3 The Coal Authority has not responded to the consultation letter.

***Noted.***

3.4 The Scottish Environment Protection Agency advises that should this application be successful, it will be necessary for the applicant to seek a formal variation to the Part B Authorisation issued by SEPA under the auspices of the Environmental Protection Act 1990 in respect of the breaking, screening, transporting, loading, unloading and stocking of coal relative to the

new extension area. In this regard SEPA has contacted the applicant directly on this matter.

***Noted.***

3.5 The Royal Society for the Protection of Birds does not object to the extension to the excavation area. However it has some serious concerns regarding the ongoing opencast activity at this site because of the failure to mitigate for current activity. RSPB hopes that this can be addressed through the following conditions.

(i) Wading birds: the application describes the area of land as having no ecologically significant features. However, one of the principle features of interest on the original site was wading birds. It seems likely that this land will hold similar interest, albeit over a far smaller area. Loss of a greater area of this habitat should be mitigated for by increasing the mitigation area. Suggested condition – The Section 75 mitigation area will be increased by approximately 10% in line with the increase in site area.

(ii) Hen harriers: No mention is made in the application of potential impacts on hen harrier which is one of the qualifying species in the nearby Muirkirk and North Lowther Uplands SPA. Monitoring of the historical winter roost near the site was being carried out as a condition of Garleffan. If the extension goes ahead, it will be even more important that this monitoring continues. Suggested condition – Hen harrier winter roost monitoring, as specified in the Section 75 Agreement for Garleffan, will be continued for 2004/5 and 2005/6

(iii) Section 75 Agreement: The mitigation work specified in the Section 75 Agreement for High Polquheys has not been carried out. This issue has been raised by RSPB on several occasions over the last few years yet no action has been taken to enforce these matters. While some progress was made with LAW Mining to agree the work required, to our knowledge nothing has been carried out on site. ATH must undertake to carry out the planning conditions attached to the original consent before being granted permission for an extension. Suggested condition – A management plan for the mitigation area will be produced within 3 months of consent being granted, to the satisfaction of Scottish Natural Heritage and RSPB Scotland.

***It is recognised that the previous operator of the Garleffan II site failed to meet obligations both in terms of site operation and the Section 75 Agreement for the site. However, the new operator of the site is committed to ensure that such matters are appropriately addressed. The request by the RSPB can be accommodated both within the terms of the current Section 75 Agreement for the site and with amended provisions.***

3.6 Scottish Natural Heritage and The Scottish Wildlife Trust have not responded to the consultation letter at the time of writing this report.

***Noted.***

3.7 The Nith District Salmon Fishery Board has indicated that the proposed extension does not give rise to any concern with regard to migratory salmonid fishery of the River Nith and accordingly has no comment to make. The Board would take this opportunity to thank the Division for involving it in all planning related matters that may be of concern to the Nith District Salmon Fishery Board and looks forward to continuing to work with the Division in the future.

***Noted.***

3.8 Scottish Water has indicated that record drawings show that there is a 4" raw water main located within the development site that may be affected by the application. Contact should be made with Developer Services to discuss what measures are to be taken to safeguard this apparatus.

***The applicant has been advised of the comments of Scottish Water.***

3.9 Power Systems has no adverse comments to make on the proposed development.

***Noted.***

3.10 The Scottish Executive Enterprise, Transport and Lifelong Learning Department has no objections to the proposed development subject to the condition that wheel washing facilities shall be provided within the site and regular sweeping of the Garleffan roundabout shall be carried out particularly in channels and on lightly trafficked areas.

***The existing Garleffan site has a wheel washing facility and a condition is attached to the current consent requiring that the public roads are kept free from spillage and debris arising from the transportation of coal to the Crowbandsgate railhead.***

3.11 East Ayrshire Environmental Health Service notes that coal from this extension will be taken to the established processing area at Rottenyard and thereafter the Crowbandsgate railhead for onward transportation of coal off site. Although the extension will extend the coaling operations by some three months, it is noted that no extension within the approved overall consent period will be necessary. It is presumed that no significant alterations will require to be made to the existing conditions insofar as they relate to environmental limits such as site noise criteria etc. The site is relatively remote, although there are a few farms to the west of the site which will be fractionally closer to the proposed extension. However, given that the coal extraction operations will be virtually an extension of existing working seams, the expectation is that there will be no significant additional impact on any surrounding properties. If this is indeed the case then the Service would have no adverse comments to offer in respect of the application.

***Noted.***

#### **4. REPRESENTATIONS**

4.1 None.

#### **5. ASSESSMENT AGAINST DEVELOPMENT PLAN**

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (1999) and the Adopted East Ayrshire Opencast Coal Subject Plan (2003).

##### Ayrshire Joint Structure Plan

5.2 With regard to the small extension proposed under the current application, the Approved Ayrshire Joint Structure Plan indicates in its Key Diagram that the Garleffan II development site lies within a Preferred Area of Search which represents an area which has few environmental constraints, is isolated from most local communities and is close to existing railheads. The proposed development requires to be assessed against Policy E14 which states: -

*Development opportunities for opencast coal working shall be directed to Preferred Areas of Search in East Ayrshire identified on the Key Diagram. Local Plans shall bring forward detailed policies and proposals for opencast working within these areas.*

***The proposed extension site falls within a Preferred Area of Search.***

5.3 Policy E13 states that proposals to extend the supply of land with planning consent for the winning and working of minerals shall be considered against the following criteria:

- (i) impact on the countryside, landscape character, visual amenity and the natural and built environment.
- (ii) the impact caused by noise, dust and the contamination of ground and surface water.
- (iii) any adverse effect on communities within Ayrshire.
- (iv) opportunity to maximise transport by rail or sea.
- (v) extent of directly related community benefit derived such as enhancement and creation of landscapes and habitats, and removal of dereliction.
- (vi) cumulative impact of proposals in one area and the extraction period.

***The original application for the Garleffan II opencast site (Ref. No.00/0526/FL) was assessed and determined against the stated criteria. The proposals promoted by the current application will be implemented under the existing planning controls within the existing consent and Section 75 Agreement and subject to amendments referred to elsewhere in this report. It is considered that the proposed small extension would not conflict with the stated criteria in terms of its operational conduct.***

***The current application is therefore considered to be in accordance with the Structure Plan.***

#### East Ayrshire Opencast Coal Subject Plan

5.4 The application requires to be assessed against relevant pertinent policies promoted within this approved plan. *Note that in the following paragraphs some of the policies are summarised.*

(i) Policy MIN 1: All future opencast coal developments will be directed towards and limited to the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

***Part of the proposed Garleffan extension area lies outwith the identified Potential Coal Extraction Areas and therefore the proposal requires to be assessed against policies MIN2 and MIN 3***

(ii) Policy MIN 2: There will be a presumption of refusal of applications for any new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short term extraction proposals which meet the following criteria:

(a) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction.

(b) there is an overall benefit for communities affected including local employment; and

(c) there are no conflicts with any other Subject Plan Policies.

***The proposed development represents an extension to the existing Garleffan II operational opencast coal site and therefore requires to be assessed against Policy MIN3.***

(iii) Policy MIN 3: Subject to detailed consideration the Council will generally be supportive of any proposal to extend the existing operative opencast coal site within the Potential Coal Extraction Areas either laterally or through an increase in the depth of existing workings provided that the following criteria are met:

(i) that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site;

***The proposed development represents an extension to the existing operations and will be carried out as a sequential phase of the approved Garleffan II site.***

(ii) that the extended operations utilise fully the facilities and site infrastructure serving the original opencast site; and

***The proposed development will be carried out utilising existing site facilities and infrastructure.***

(iii) that the scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing on the original site.

***The scale of operations, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations.***

(iv) that the proposed extension does not significantly prejudice plans for the restoration of the existing site.

***The proposed restoration of the Garleffan II site will not be significantly prejudiced, as all operations will be completed within the current consented timescale for the site.***

**However in this case part of the proposed extension area (approximately 35% of the excavation area) lies outwith a Potential Coal Extraction Area.**

***However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, these were identified as a result of an assessment process including the presence of known reserves of coal. While there are no particular environmental or infrastructure constraints that would exclude this area as part of the Potential Coal Extraction Area in the locality of Garleffan, it has been excluded on the basis of no coal reserve having been previously identified on that part of the site.***

**It is therefore considered that the proposed development would represent a minor technical departure from Policy MIN3.**

Outwith the Potential Coal Extraction Areas, the Council will assess any extension proposal on its own merits and against the above criteria, and will generally not be supportive of such development except where:

- (v) there is a clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction.

***There will be no significant removal of existing areas of dereliction as a result of working in the extension area.***

- (vi) there is an overall benefit for communities affected, including local employment;

***The coaling within the proposed extension area will safeguard the jobs of existing employees, contractors and service, albeit for a short period of time.***

- (vii) there are no conflicts with any other Subject Plan Policies.

***It is considered that the proposed development does not conflict with the other Subject Plan Policies as noted below.***

Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a total extraction period in excess of 10 years will not be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.

***The existing Garleffan II opencast site has a current consent for a period of 11 years (October 2012). The proposed operations will be undertaken within this current consented timescale.***

- (iv) Policy MIN 4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the following criteria:

- (i) the impact on agricultural land quality, the landscape character and visual amenity of the area, and the natural and built environment;

***It is considered that the impact on the landscape character and quality of the site will be minimal given the relatively small extension area involved. No statutory or non-statutory natural or built environment interests will be directly affected by the proposals.***

- (ii) the impact on the area of noise, dust and the contamination of ground and surface water and air quality;

***It is considered that in line with the existing controls imposed in the existing consents for the Garleffan II site, the proposed extension can be operated in such a manner as to minimise any adverse impacts and can be undertaken to environmentally acceptable standards.***

(iii) the impact of the development on local communities, groups of houses and individual dwellings;

***It is considered that in line with the existing controls imposed in the existing consents for the Garleffan II site, the proposed extension can be operated in such a manner as to minimise any adverse impacts on residential properties and can be undertaken to environmentally acceptable standards.***

(iv) the extent of any directly related community benefit to be derived from the development such as the enhancement and creation of landscapes and habitats, and the removal of dereliction;

***It is considered that overall restoration of the Garleffan II site will result in net ecological gains.***

(v) the opportunities to maximise transportation by rail;

***Coals won from the Garleffan II site will be transported by road to the Crowbandsgate railhead for onward dispatch to the power generation market, consistent with the existing operations.***

(vi) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area, including any significant prejudice to restoration plans for any existing site;

***The proposed restoration of the Garleffan II site will not be significantly prejudiced, as all operations will be completed within the current consented timescale for the site.***

(vii) any impact on inward investment opportunities in the area; and

***It is considered that the proposed extension would have minimal impact on inward investment opportunities in the area.***

(viii) the period of extraction.

***The existing Garleffan II opencast site has a current consent for a period of 11 years (October 2012). The proposed operations will be undertaken within this current consented timescale.***

(v) Policy MIN 12: The Council will seek to ensure that a proliferation of opencast coal sites within close proximity to any one community or within one particular area does not occur. In this context, any proposed new opencast developments may be considered to contribute to an unacceptable cumulative impact on the amenity of an area where that development would:

(i) constitute a third approved or operative site within 3 Kms of each other or within a 3 Km radius of any particular community as indicated on the Opencast Coal Subject Plan Proposals Map; or

(ii) cause or exacerbate excessive adverse amenity and environmental disruption experienced by a community or group of dwellings from an existing operative site or from successive opencast operations over a total extraction period of 10 years; or

(iii) generate volumes of heavy traffic which taken together with the volumes of coal haulage vehicles already using the routes concerned, would cause unacceptable detriment to the amenity of any community or group of dwellings located along proposed haulage routes; or

(iv) result in an unacceptable accumulation of adverse impacts on international or nationally designated sites of nature conservation interest over time and place within a particular locality, or an accumulation of individual impacts which collectively have a significant adverse effect on the integrity of such areas.

***The proposed development is not a new site but an extension to the existing Garleffan II site. Nonetheless it is considered that the proposed extension would not conflict with the provisions of policy MIN 12.***

(vi) Policy MIN 15: All developers are required to restore their operational sites progressively to the highest possible standards. Developers will be required to provide for the creation of new habitats appropriate to the particular after uses of the site concerned as an integral part of their detailed restoration and aftercare proposals.

***It is recognised that the previous operator of the Garleffan II site failed to meet obligations both in terms of site operation and the Section 75 Agreement for the site. However, the new operator of the site is committed to ensure that such matters are appropriately addressed.***

(vii) Policy MIN 18: The Council will strongly encourage opencast coal operators to utilise existing rail facilities for the transportation of coal which is not specifically destined for local domestic Ayrshire markets.

***Coals won from the proposed extension area will be dispatched by road to the existing railhead facility at Crowbandsgate.***

(viii) Policy MIN 19: All haulage of extracted materials between the area of excavation and the point of dispatch from the opencast site should be via internal haul roads only.

***All coals won from the proposed extension area will be taken to the coal preparation area via existing internal haul roads.***

(ix) Policy MIN 20: Haulage of opencast coal on the public road system to be along clearly defined haulage routes agreed with the Council. With the exception of the 'A' Class Roads throughout East Ayrshire, opencast operators will be required, at their own expense, to bring all roads used by their haulage vehicles up to an acceptable standard for haulage purposes, prior to the use of the route for dispatch purposes. Requirement for operators to pay for any necessary upgrading and maintenance of routes used by opencast traffic.

***Significant road infrastructure improvements were undertaken as part of the original Garleffan development.***

(x) Policy MIN 21: Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

(i) to ensure the highest possible operational standards for the transportation of extracted minerals;

(ii) to ensure best operational practice regarding road safety and operational matters;

(iii) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes

(iv) to audit and record operational details of the transportation of coal on a regular basis; and

(v) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council is currently formulating with the co-operation of the opencast operators, a 'Transportation of Coal by Road Protocol' addressing the above issues to which existing and potential opencast operators and their approved sub-contractors will be invited to subscribe.

***The existing Section 75 Agreement contains an obligation in respect of this matter.***

(xi) Policy MIN 23: In order to ensure that opencast operations do not cause unacceptable disturbance and nuisance to residents of local

communities, the Council is likely to consider opencast developments unacceptable where:

- (i) a development has a boundary which encroaches within 500 metres of the community concerned.

***The proposed extension area does not encroach within 500 metres of any settlement.***

- (ii) the proposal involves a substantial area for extraction over an extraction period in excess of 10 years.

***All operations will be completed within the current consented life of the Garleffan II site.***

- (iii) the proposal is likely to be the subject of repeated extensions, perpetuating disturbance to local communities for a period substantially longer than 5 years.

***The proposal under consideration is unlikely to be the subject of repeated extensions.***

(xii) Policy MIN 25: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, group of dwellings or individual dwellinghouses not in the ownership or under the control of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where all of the following criteria are met:

- (i) the Council is satisfied that there are no objections which cannot be overcome through the expeditious use of conditions or planning agreements from residents, owners, tenants or occupiers of properties located within 500 metres of the proposed working face of the site;

***There are no residential properties, outwith the applicant's ownership or control that lie within 500 metres of the working face of the site.***

- (v) the extraction or operational area does not encroach within 100 metres of any group of dwellings, individual dwellinghouse(s) or sensitive establishment concerned.

***The proposed extension does not encroach within 100 metres of any dwellings or sensitive establishment.***

(xiii) Policy MIN33: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant to enter into an agreement with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997 in order to regulate, by

agreement, such matters as cannot adequately be regulated by the imposition of planning conditions.

***The applicant has indicated a willingness to enter into a Section 75 Agreement or an amendment to the existing agreement in respect of the matters that may require to be subject of such an agreement.***

(xiv) Policies MIN34 and MIN35: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

***The applicant is a significant contributor to the Mineral Trust Fund in respect of the Garleffan and Skares Road opencast sites and other sites operated by the applicant. Coals extracted from the proposed extension site shall be subject to the contribution rate of 27.5 pence per tonne of saleable coal.***

(xv) Policies MIN36 and MIN37: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

***The existing Garleffan II opencast site is subject to a Section 75 Agreement encompassing the above matters.***

***It is therefore considered that the proposed development is generally consistent with the relevant EAOCSF policies pertinent to this application although it does represent a minor technical departure from Policy MIN3 as described above.***

## **6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are NPPG 16 – ‘Opencast Coal and Related Minerals’, appropriate Planning Advice Notes, consultation responses and relevant planning history.

### **National Planning Policy Guidelines**

6.2 Recent guidance on opencast coal extraction has been given in National Planning Policy Guideline 16: Opencast Coal and Related Minerals. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coaling may take place. Many of the provisions of NPPG 16 are addressed within the EAOCSF with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. The proposal is thus considered to be consistent with NPPG 16.

### Planning Advice Notes

6.3 Notwithstanding the amendments required to regularise the current operational status of the Garleffan II site, the proposed operations are still in compliance with the advice contained within Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D.

### Planning History

6.4 The more relevant planning history of the Garleffan site and other relevant information is as follows:

- (i) Planning permission was granted for the Garleffan II opencast site on 05 October 2001 (Ref. No. 00/0526/FL), permission having been previously granted for the original Garleffan site on: on 09 September 1999 (Ref. No. 98/0539/FL). These consents were granted to L.A.W. Mining Limited which operated the site until 28 November 2003 at which time its interests in the Garleffan site were acquired by ATH Resources.
- (ii) Planning permission for the Crowbandsgate Railhead was granted on 29 October 1999 under application 98/0762/FL with the facility having been in operation since 2000. The facility was set up as a dedicated rail facility to serve the Garleffan sites and was previously operated by L.A.W. Mining Limited but is now operated by its new owner ATH Resources.
- (iii) Planning permission to vary a number of conditions relating to the Garleffan II site was granted on 10 September 2004 subject to the concluding of a Section 75 Agreement (Ref. No. 04/0150/FL).

### Consultation Responses

6.5 There are no consultation responses that would suggest refusal of the application is appropriate. While it is recognised that the RSPB Scotland has a number of concerns it is considered that these can be addressed through either the provisions of the existing Section 75 Agreement for the site or by amending the provisions of the Agreement.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications for the Council associated with the determination of this application. It is considered that the proposed development will necessitate amendments to the existing Section 75 Agreement relating to the Garleffan II site should the application be approved. These amendments would relate to the matters raised in section 8.4 below.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the proposed development is considered to be generally in accordance with the Development Plan but represents a minor technical departure in respect of a small part of the application site that lies outwith the identified Potential Coal Extraction Areas. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 above, there are material considerations relevant to this application, but in this regard, these are generally supportive of the proposed development.

8.2 The proposed development is considered to constitute a minor departure from Policy MIN3 as a part of the proposed extension area falls outwith the identified Potential Coal Extraction Areas. However, it should be noted, that in the process of identifying Potential Coal Extraction Areas in the Opencast Coal Subject Plan, these were identified as a result of an assessment process including the presence of known reserves of coal. While there are no particular environmental or infrastructure constraints that would exclude this area as part of the Potential Coal Extraction Area in the locality of Garleffan, it has been excluded on the basis of no coal reserve having been identified on that part of the site. The application promotes the extraction of 250,000 tonnes of coal that the applicant has proven exists by exploratory drilling.

8.3 The proposed extension is 22.6 hectares in size although the extended excavation area represents only some 6 hectares. The site is relatively remote with only a few farmhouses located in proximity to the application site. It is considered that the extension will present no significant additional adverse impacts beyond those that may be expected as a result of the current consented operations.

8.4 Operations within the extension area will be undertaken in accordance with the provisions of the existing planning consent and Section 75 Agreement for the Garleffan site. Coals won from the site will be taken to the existing railhead facility at Crowbandsgate.

8.5 In respect of all relevant matters and material considerations to be taken into account, it is considered that the proposed development is generally consistent with policy. Should the Committee agree with this view and be disposed to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997, for the Garleffan site has been amended to encompass obligations covering the following matters:

### **Amendment to Section 75 Agreement**

- (i) Inclusion of the extension area within the land covered by the Section 75 Agreement;

- (ii) The securing of Minerals Trust Fund contributions for coals extracted from the extension site at a rate of 27.5 pence per tonne; and
- (iii) The amendment of the Section 75 Agreement to secure the outstanding environmental mitigation and monitoring as identified in the consultation letter from the RSPB Scotland dated 07 October 2004.

## **9. RECOMMENDATION**

**9.1 It is recommended the application be approved subject to the conditions on the relevant attached sheet, but that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily concluded a Section 75 Agreement with the applicants regarding the obligations referred to in Section 8.4 of this report.**

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee because this would not result in a significant departure from the development plan.

**Alan Neish**  
**Head of Planning, Development and Building Standards**

22 November 2004  
HM/HM/SMB  
FV/DVM

## **LIST OF BACKGROUND PAPERS**

1. Application form and plans.
2. Statutory notices and certificates.
3. Consultation responses.
4. Adopted East Ayrshire Opencast Coal Subject Plan (2003).
5. Approved Ayrshire Joint Structure Plan (1999).
6. Previous application 98/0539/FL.
7. Previous application 98/0762/FL.
8. Previous application 00/0526/FL.
9. Previous application 04/0150/FL
10. NPPG 16: Opencast Coal and Related Minerals.

11. PAN 50, Annexes A, B, C and D.

Any person wishing to inspect the background papers listed above should contact Mr Hugh Melvin on 01563 555481.

**Implementation Officer: Dave Morris**

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 04/0873/FL

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Location	Garleffan II OCCS New Cumnock
Nature of Proposal:	Proposed site extension to permit extraction of additional coal
Name and Address of Applicant:	ATH Resources Richmonds House White Rose Way Doncaster DN4 5JH
Name and Address of Agent	N/A

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DPO's Ref: [                    ]  
PPO's Ref: [Hugh Melvin ]

The above **FULL** application should be granted subject to the following conditions:-

1. The proposed working of the extension area shall be carried out in accordance with the approved plans and method statement received by the Planning Authority on 28 August 2004

REASON: To ensure that the development is carried out in accordance with the approved plans.

2. The proposed working of the extension area shall otherwise be carried out in accordance with planning consent 00/0526/FL dated 05 October 2001 as amended by planning consent 04/0150/FL dated 10 September 2004.

REASON: To ensure continuity and consistency in operations carried out on site in terms of the consent granted for the Garleffan II development.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT  
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 555320.**